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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**

8 HANK ZABALA,

9 *Plaintiff,*

10 vs.

11 MIKE HALEY, *et al.*

12 *Defendants.*  
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2:13-cv-00393-PMP-PAL

ORDER

15 This *pro se* civil rights suit by a former local detainee now in state custody comes  
16 before the Court on Plaintiff's two applications (## 1& 2) to proceed *in forma pauperis* and for  
17 initial review of the complaint. The Court finds that Plaintiff is unable to pay a significant initial  
18 partial filing fee and therefore will grant the pauper applications subject to the remaining  
19 provisions of this order. The Court accordingly turns to screening of the complaint.

20 When a "prisoner seeks redress from a governmental entity or officer or employee of  
21 a governmental entity," the court must "identify cognizable claims or dismiss the complaint,  
22 or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to state a  
23 claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who  
24 is immune from such relief." 28 U.S.C. § 1915A(b).

25 In considering whether the plaintiff has stated a claim upon which relief can be granted,  
26 all material factual allegations are accepted as true for purposes of initial review and are to  
27 be construed in the light most favorable to the plaintiff. *See, e.g., Russell v. Landrieu*, 621  
28 F.2d 1037, 1039 (9th Cir. 1980). However, mere legal conclusions unsupported by any actual

1 allegations of fact are not assumed to be true in reviewing the complaint. *Ashcroft v. Iqbal*,  
 2 556 U.S. 662 (2009). That is, bare and conclusory assertions that constitute merely formulaic  
 3 recitations of the elements of a cause of action and that are devoid of further factual  
 4 enhancement are not accepted as true and do not state a claim for relief. *Id.*

5 Further, the factual allegations must state a plausible claim for relief, meaning that the  
 6 well-pleaded facts must permit the court to infer more than the mere possibility of misconduct:

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 8 [A] complaint must contain sufficient factual matter,  
 9 accepted as true, to “state a claim to relief that is plausible on its  
 10 face.” [*Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127  
 11 S.Ct. 1955, 1974, 167 L.Ed.2d 929 (2007).] A claim has facial  
 12 plausibility when the plaintiff pleads factual content that allows the  
 13 court to draw the reasonable inference that the defendant is liable  
 14 for the misconduct alleged. *Id.*, at 556, 127 S.Ct. 1955. The  
 15 plausibility standard is not akin to a “probability requirement,” but  
 16 it asks for more than a sheer possibility that a defendant has  
 17 acted unlawfully. *Ibid.* Where a complaint pleads facts that are  
 18 “merely consistent with” a defendant’s liability, it “stops short of  
 19 the line between possibility and plausibility of ‘entitlement to  
 20 relief.’” *Id.*, at 557, 127 S.Ct. 1955 (brackets omitted).

21 . . . . [W]here the well-pleaded facts do not permit the court  
 22 to infer more than the mere possibility of misconduct, the  
 23 complaint has alleged - but it has not “show[n]” - “that the pleader  
 24 is entitled to relief.” Fed. Rule Civ. Proc. 8(a)(2).

25 *Iqbal*, 556 U.S. at 678.

26 Allegations of a *pro se* complainant are held to less stringent standards than formal  
 27 pleadings drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519 (1972).

28 Plaintiff Hank Zabala alleges that he was placed in disciplinary segregation at the  
 Washoe County Detention Facility (WCDF) as an act of racial bias and discrimination  
 because he is a Mexican-American with tattoos and also in retaliation for his efforts to file  
 grievances. He raises claims under the First Amendment, under the Equal Protection Clause  
 of the Fourteenth Amendment, and for a denial of procedural due process. Plaintiff names  
 Washoe County Sheriff Mike Haley and Deputies Balaam, Youngblood, Jenkins, and  
 Christinsen as defendants in their individual and official capacities. He seeks compensatory  
 and punitive damages along with declaratory relief.

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1 The specific factual allegations of the complaint states claims under the First  
2 Amendment, under the Equal Protection Clause, and for a denial of procedural due process.<sup>1</sup>

3 The allegations of the current complaint, however, do not state a claim upon which  
4 relief may be granted against the defendants in their official capacities. Plaintiff may not  
5 pursue an official capacity claim against a municipal government officer absent factual  
6 allegations tending to establish that the alleged constitutional violations occurred pursuant to  
7 an official policy, custom or practice of the municipality. *See, e.g., Butler v. Elle*, 281 F.3d  
8 1014, 1026 n.9 (9<sup>th</sup> Cir. 2002); *Arpin v. Santa Clara Valley Transportation Agency*, 261 F.3d  
9 912, 925 (9<sup>th</sup> Cir. 2001). The complaint does not contain any such allegations. The complaint  
10 accordingly fails to state a claim against the defendants in their official capacity.

11 The complaint further does not state a claim for relief against Sheriff Haley in his  
12 individual capacity. There is no *respondeat superior* liability under § 1983. That is, a  
13 supervisory official may be held liable in his individual capacity only if he either was personally  
14 involved in the constitutional deprivation or a sufficient causal connection existed between his  
15 unlawful conduct and the constitutional violation. *See, e.g., Jackson v. City of Bremerton*, 268  
16 F.3d 646, 653 (9<sup>th</sup> Cir. 2001). The complaint does not contain any nonconclusory allegations  
17 of personal involvement by Sheriff Haley in the constitutional violations that Plaintiff alleges  
18 were directly committed by the remaining defendants.

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21 <sup>1</sup>The constitutional standards for determining whether a protected liberty interest arises from  
22 placement of a pretrial detainee in disciplinary segregation are not necessarily the same as the standards  
23 pertaining to convicted prisoners. *Cf. Mitchell v. Dupnik*, 75 F.3d 517, 523 (9<sup>th</sup> Cir. 1996); *see also Valdez v.*  
24 *Rosenbaum*, 302 F.3d 1039, 1044 n.3 (9<sup>th</sup> Cir. 2002); *Carlo v. City of Chino*, 105 F.3d 493, 498-99 & n.1 (9<sup>th</sup>  
25 Cir. 1997). However, the placement of a pretrial detainee in segregation does not necessarily violate  
26 procedural due process in all cases. *Cf. Martucci v. Johnson*, 944 F.3d 291, 294-95 (6<sup>th</sup> Cir. 1991). Under  
27 *Bell v. Wolfish*, 441 U.S. 520 (1979), not all restrictions on movement and not all losses of choice and privacy  
28 attending pretrial detention violate the Constitution. 441 U.S. at 537. Rather, the plaintiff must demonstrate  
that the conditions amount to punishment of the detainee. He may do this by showing an expressed intent to  
punish on the part of detention facility officials. Absent such an expressed intent to punish, the court must  
determine whether the restriction was imposed for some other legitimate governmental purpose, whether the  
restriction is rationally connected to that purpose, and whether the restriction appears excessive in relation to  
that purpose. 441 U.S. at 538-39. Provisions of state law also potentially may be relevant to the inquiry. *See*  
*Valdez*, 302 F.3d at 1044 n.3. The specific factual allegations presented in the complaint are sufficient to  
state a procedural due process claim.

1 The Court will provide Plaintiff an opportunity to file an amended complaint correcting  
2 these deficiencies, to the extent possible.

3 In filing an amended complaint, Plaintiff should note the following.

4 First, in the original complaint, Plaintiff presented extensive allegations of fact in the  
5 "Nature of the Case" section rather than in the single count presented. In the "Nature of the  
6 Case" portion of the form, Plaintiff instead should give only a brief general overview of the  
7 factual basis for the action. Under the instructions, "[t]his is not the place to provide detailed  
8 information about what each defendant did to violate your rights – that should be done in" the  
9 counts. *Instructions*, at 6. All operative specific allegations of fact should be presented within  
10 the count or counts of the complaint.

11 Second, an amended complaint is a "stand-alone" filing that does not carry forward  
12 allegations from the original complaint. As discussed herein, the complaint, in the main,  
13 states viable federal constitutional claims. Plaintiff therefore should repeat allegations in the  
14 amended complaint that state a claim and that he wishes to continue to make. The amended  
15 complaint, again, is a "stand-alone" filing, and Plaintiff should restate all of the factual  
16 allegations that he seeks to present in the case.

17 IT THEREFORE IS ORDERED that Plaintiff's two applications (## 1& 2) to proceed  
18 *in forma pauperis* are GRANTED subject to the remaining provisions of this order. Plaintiff  
19 shall not be required to pay an initial partial filing fee. However, even if this action is  
20 dismissed, the full \$350.00 filing fee still must be paid pursuant to 28 U.S.C. § 1915(b)(2).

21 IT IS FURTHER ORDERED that Plaintiff is permitted to maintain this action to a  
22 conclusion without the necessity of prepayment of any additional fees or costs or the giving  
23 of security therefor. This order granting *in forma pauperis* status shall not extend to the  
24 issuance of subpoenas at government expense.

25 IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. § 1915(b)(2), the Nevada  
26 Department of Corrections shall pay to the Clerk of the United States District Court, District  
27 of Nevada, 20% of the preceding month's deposits to Plaintiff's account (in the months that  
28 the account exceeds \$10.00) until the full \$350.00 filing fee has been paid for this action. The

1 Clerk shall SEND a copy of this order to the Finance Division of the Clerk's Office. **The Clerk**  
2 **shall also SEND a copy of this order to the attention of the Chief of Inmate Services for**  
3 **the Nevada Department of Corrections, P.O. Box 7011, Carson City, NV 89702.**


4 IT FURTHER IS ORDERED that the Clerk of the Court shall filed the original complaint  
5 and that the following claims are DISMISSED without prejudice for failure to state a claim  
6 upon which relief may be granted: (a) all claims against all defendants in their official capacity;  
7 and (b) the claims against defendant Haley also in his individual capacity, such that all current  
8 claims against defendant Haley are dismissed by this order.

9 IT FURTHER IS ORDERED that Plaintiff shall have **thirty (30) days** within which to  
10 mail an amended complaint to the Clerk for filing correcting the deficiencies in the original  
11 complaint, if possible. If Plaintiff does not timely mail an amended complaint correcting the  
12 deficiencies in the original complaint, the action will proceed forward only on the claims  
13 against defendants Balaam, Youngblood, Jenkins, and Christinsen only in their individual  
14 capacities.

15 IT FURTHER IS ORDERED that plaintiff shall clearly title any amended complaint filed  
16 as an amended complaint by placing the word "AMENDED" immediately above "Civil Rights  
17 Complaint" on page 1 in the caption and shall place the docket number,  
18 **2:13-cv-00393-PMP-PAL**, above the word "AMENDED" in the space for "Case No." Under  
19 Local Rule LR 15-1, any amended complaint filed must be complete in itself without reference  
20 to prior filings. Thus, any allegations, parties, or requests for relief from prior papers that are  
21 not carried forward in the amended complaint no longer will be before the Court.

22 The Clerk shall SEND Plaintiff with two copies of a blank § 1983 complaint form and  
23 one copy of the instructions for same, along with a copy of the original complaint that he  
24 submitted.

25 DATED: November 12, 2013.

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28 PHILIP M. PRO  
United States District Judge